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SUBJECT: MOMENTARY STALL IN CRAFTING SOLUTION TO
DE-BA'ATHIFICATION CONTROVERSY, IN WAKE OF TALABANI'S
REMARKS

Classified By: Acting POL M/C Yuri Kim, for reasons 1.4 (b) and (d).

[¶1.](#) (C) SUMMARY: Political negotiations to resolve the de-Ba'athification controversy appear to have stalled in the wake President Talabani's January 21 actions questioning the legitimacy of the Accountability and Justice Commission (AJC). Talabani's move -- including a statement in support of non-Saddamist Ba'athists -- is reverberating through Iraq's political class and, to a moderate extent for now, in the streets. Political leaders are reassessing where they are in keeping key players on board for the joint political track/legal track solution they had artfully cobbled together. Saleh al-Mutlaq, responding to the opening he thought Talabani perhaps inadvertently created, insisted publicly that the Presidency Council "freeze" the actions of the AJC and is reportedly insisting privately that his Iraqiyya Alliance call for the entire process be postponed until after elections. This is a maximalist postponement that Shi'a negotiator Hadi al-Amiri has made clear to us privately would be a no-go for the Shi'a street and for Shi'a politicians. We will be working January 23 to assess fallout from Talabani's remarks and pressing the parties to pursue a workable solution. END SUMMARY.

[¶2.](#) (C) Friday prayers January 22 have created the appearance of a momentary lull in the rush of reassessments to President Talabani's January 21 statements questioning the legitimacy of the Accountability and Justice Commission (AJC) and in the behind-the-scenes shuttle diplomacy mounted by Shi'a power broker Hadi al-Amiri and Sunni heavyweight DPM Rafi'e al-Issawi. Amiri, who was to have briefed PM Maliki January 21 on the plan, has been unable to gain access to the PM, as of late January 22, according to Issawi. Issawi told Acting POL M/C that Amiri had managed to meet with Talabani. SRSG Melkert was scheduled to meet with VP Adel Abd al-Mahdi.

TALABANI QUESTIONS LEGALITY OF AJC

[¶3.](#) (C) Talabani stated at a press conference yesterday that he plans to ask Chief Judge of the Iraqi Supreme Court Medhat Mahmoud if the AJC had statutory authority to act, given that Parliament refused in 2009 to endorse the slate of commissioners nominated to serve on the AJC. Judge Medhat's staff have told us, however, that the judge has left the country; they said they did not know where he had gone, or when he would be back. (COMMENT: We have met with the cautious Medhat earlier in this crisis and gauged that he will likely be reluctant to render a clear-cut opinion on whether the AJC decisions were legal. What he would be more likely willing to do is send signals to the seven-judge appeals panel for AJC decisions, the Cassation Chamber, that it is clearly within their purview to weigh doubts about the AJC's statutory authority in deciding appeals. END COMMENT.)

AND DEFENDS MUTLAQ AND OTHER "BA'ATHISTS"

¶4. (C) In his comments, Talabani also raised more profound questions about the de-Ba'athification process, noting that many former Ba'athists had changed sides and became prominent elements of opposition to Saddam, a messy reality that the AJC's black-and-white, unchecked decision-making had failed to capture. Talabani stressed the importance instead of national reconciliation and adherence to the broad spirit of the Iraqi Constitution. He distinguished between "Ba'athist Ba'athists" and "Saddamist Ba'athists." Putting prominent Sunni politician Saleh al-Mutlaq in the latter category, QSunni politician Saleh al-Mutlaq in the latter category, Talabani insisted that Mutlaq and other "Ba'athist Ba'athists" should be allowed to "participate in all fields in Iraq," including, presumably, to run as candidates in the upcoming national elections.

SHI'A POLITICIANS AND STREET CRY FOUL

¶5. (C) Talabani's statements have sent a shock wave through Iraq's political class and well as the public. Shi'a politicians are downplaying Talabani's actions, with maintained PM Maliki demurring ("My intervention would be unconstitutional.") and indicating that there were oversight structures in place to determine if the AJC acted properly. That said, his allies and ISCI politicians have been more outspoken. Hassan al-Sunnayad, spokesman for the Maliki's State of Law Coalition was quoted saying that Talabani's views represented "his personal opinion only," and insisting that "we are not interested in comments by any politicians or bloc, except for decisions voted on by the Accountability and Justice (AJC). Those who object have only the Iraqi judicial system." MP Hummam Hamoudi, ISCI bloc leader and Chairman of the Iraqi National Alliance List, offered a similar, but more

tempered assessment of Talabani's intervention, saying "President Talabani's comments are respected. However, the Constitution and the law are the go-to in this issue." The Shi'a street made clear its views on the President's statements January 21 and 22. There were reports of "hundreds" gathered in Najaf and Karbala to protest Talabani's remarks as well as (in the case of Karbala) foreign interference in the work of the elections and the de-Ba'athification process.

MUTLAQ LUNGES AT OPENING HE SEES

¶6. (C) Mutlaq spotted the opening Talabani perhaps inadvertently created and with his usual inelegant brio lunged forward, expressing appreciation for the President's statements and insisting that the Presidency Council meet as soon as possible to "freeze" the actions of the AJC and instruct the Independent High Electoral Commission (IHEC) that it should disregard the list of 500-odd disqualified candidates it had received. Issawi told Acting POL M/C that with the possibility of nullification of the AJC in toto that Talabani had introduced in public debate, Mutlaq and Iraqiyya List allies VP Hashimi and Osama al-Nujaifi were pushing hard for Iraqiyya to insist that the entire process be postponed into a post-election vet-the-winners procedures, a maximalist postponement that Amiri has made clear to us privately would be a no-go for the Shi'a street and for Shi'a politicians.

IHEC HAPPY TO HAVE TOSSED THE HOT POTATO

¶7. (C) IHEC Commissioner Judge Qasim al-Aboudi, head of IHEC's Legal Committee, told poloff January 22 that IHEC will wait for the decision of the Federal Supreme Court regarding the constitutionality of the AJC. In the meantime, he noted that IHEC is already aware of many appeals of the list of excluded candidates, but said he was unable to give a specific number at this point. He predicted that the Supreme Court would rule quickly on this issue and proved the needed guidance for the Electoral Judicial Panel (to appeal IHEC

decisions) and the Cassation Chamber (for appeals of AJC decisions) on how to handle the appeals. He expressed confidence that IHEC would get the guidance it needed to proceed with election preparations in a timely manner. UNAMI, however, was less optimistic, assessing that Judge Medhat would be reticent to render an opinion that would place him in the center of the political firestorm.

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